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Federal Communications Commission

Small Business Market Entry Barriers Forum
under
Section 257 of the Telecommunications Act of 1996
hosted by the Office of General Counsel
and
Office of Communications Business Opportunities

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on behalf the
Office of Communication, UCC
and the
Minority Media Telecommunications Council

September 24, 1996

FCC
FORUM ON SMALL BUSINESS MARKET ENTRY BARRIERS

Introduction

The Office of Communication and the Minority Media Telecommunications Council ("MMTC") worked very closely with Congressmember Bobby Rush, the chief sponsor of Section 257, to ensure that the 1996 Telecommunications Act would safeguard the interests of small, minority and female-owned businesses by requiring the Commission to conduct a proceeding on eliminating market entry barriers. Original drafts of Section 257 included minority and female entrepreneurs in the protected class of entrepreneurs. The Commission, therefore, should be commended for its leadership in addressing the concerns of minorities and women in its Market Entry Notice of Inquiry.

Today, I wish to address three areas that affect the regulatory and competitive environments in which minorities and women are seeking to compete. In our comments that have been already filed, we state our dismay with the Commission's reluctance to adopt a rigorous EEO program for common carriers despite its acknowledgement that work experience is an important prerequisite for entrepreneurship. Secondly, I will address recent amendments to the local multiple ownership rules that are undermining the competitive ability of minority broadcasters. Finally, I will discuss the need for the Commission to move forward with the Telecommunications Development Fund as authorized by the 1996 Telecommunications Act. The Fund, if properly capitalized, can serve to promote market entry and eliminate the capital formation barriers that have historically plagued minority and female entrepreneurs..

Common Carrier EEO

I am sure that everyone here today would agree that we are on the brink of explosive growth in the delivery of new telecommunications services. Deals and being made, alliances are being formed, and large amounts of capital in being invested. But only those entrepreneurs who poised and ready will benefit from these developments.

Two years ago, in a report to Congress, the Commission noted that the growth of new telecommunications services,

> ...reinforce[d] the need to reexamine [its] EEO policies to ensure that women and minorities are full participants in the overall telecommunications sector, especially in management positions, which are often stepping stones to ownership.

In the Matter of Implementation of the Commission's EEO Rules, MM Docket 94-34 (1994) para. 94.

Significantly, in the same report, the Commission was unable to provide any figures on the numbers of minorities and women employed any segments of the common carrier industry despite having collected data for nearly 25 years. Significantly, boxes that in 1994 contained hundreds of industry prepared EEO reports in 1994, today remain scattered on the floor of the Common Carrier Enforcement Branch. I find the Commission's commitment to Congress that it will "institute a more extensive and far-reaching review of [its] EEO polices... [in light of its] awareness of the ongoing communications revolutions" irreconcilable with the fact that it took 2 hours for me to search through hundreds of envelopes - some of which had not been opened - to find Southwestern Bell Telephone's most recently filed EEO report.

The Commission has never assigned a full-time person to EEO enforcement in the Common Carrier Bureau. And despite a 1970 promise to develop a computerized database, there have been no efforts to compile industry-wide employment trend reports.

The consequence of this inaction on the part of the Commission is that white males have had a 25 year jump on minorities and women in terms of advancing through higher management, benefiting from the executive training and moving on to entrepreneurship. It is no wonder that only 28 Black-owned telecommunications firms were listed in the 1994 Black Enterprises 100. And this number was down from 33 in 1992.

The most important question is what can the Commission do now. First, the EEO report, Form 395, needs to be revised to identify the numbers of minorities and women in upper management positions. The current reporting category of "Officers and Managers" is in appropriate for an industry that has seven management levels.

Secondly, the Commission should revise Form 395 to monitor the number of minorities and women that receive executive level training.
Third, the promise to develop a computerized database should be acted upon. Finally, the Common Carrier Bureau should solicit the advice and counsel of the public interest community to develop an effective enforcement program. The Office of Communication and MMTC are prepared to work with the Commission in this area.

Multiple Ownership

The multiple ownership rules for television and radio were significantly altered by the 1996 Telecommunications Act. The dramatic increase in market consolidation at both the national and local levels has been of great concern to both the Office of Communication and MMTC.

As spelled out in our Comments, we are concerned that minority-owned businesses are being effectively squeezed out of local markets by group owners that are better financed and in a better position to take advantage of the new radio local ownership rules. The Commission's definition of "local market" in combination with Section 202(b) of the Act permits undue concentrations of ownership in local communities. We have cited the example of how 6 of the 8 radio stations licensed to the City of Trenton can be commonly owned because that community is considered part of the Philadelphia/Trenton market.

The solution to this problem is to establish a minimum number of separately owned stations that must remain is existence in a community after a sale or transfer of a license has taken place. Certainly, 50 percent of every community's radio and television stations should remain under separate ownership in order to preserve long standing policies favoring competition, diversity and localism. In comments filed by the Office of Communication in 1991, a survey of 5 television markets indicated that individually owned stations compared to group owned stations aired more locally produced public affairs programming. The Commission has yet to identify evidence to support its theory that group owners reinvest savings from economies of scale into locally produced programming.

In the upcoming second notice of further rulemaking regarding television ownership (MM Docket 91-221), the Commission must explore the ways in which to promote diversity and competition by minority-owned stations. Certainly, by establishing a minimum number of independently owned television and radio stations to serve a market would accomplish this objective. Secondly, I urge the Commission not to adopt a grade A contour as the boundary for television station markets. Adoption of such a standard would only serve to further undermine the goal of competition and diversity and provide little, if any, economic benefit to industry.

Finally, the Commission should initiate an legislative campaign to reestablish the tax certificate policy. History has shown that this minority-ownership incentive works. In view of the current rise in marketplace consolidation, a tested a tried system is the best reliable method to promote minority ownership.

Capital Formation

The Market Entry Notice of Inquiry requested information on whether small businesses obtain capital and credit under terms and conditions less favorable than those provided large businesses. The Office of Communication and MMTC have attempted to respond to this question.

Based upon a limited number of interviews, we found that minority entrepreneurs often rely upon seller financiers and venture capitalist that offer terms and conditions that are not in the long term interests of the entrepreneur. For example, we were told that warrants issued by venture capitalists often include reversionary clauses that require the owners to relinquish up to thirty to forty percent of the company to the venture capital firm, if certain performance goals are not met. These performance goals specify returns on investment or levels of advertising revenue that are often unreasonable and unattainable.

Minorities are forced to accept such terms and conditions because they are unable to assemble a portfolio comparable to a group owner.

The difficulty with our research was that our otherwise reputable sources preferred to remain anonymous. They are all practitioners that handle media transactions or minority entrepreneurs. To go on the record presented obvious conflicts of interest. We encourage the Commission, however, to investigate this area in more detail.

As a solution to the problem of capital formation we encourage the Commission to rely upon the Telecommunications Development Fund. The mission of the Fund is to serve the interests of small, including minority and female owned, businesses. If properly capitalized, the Fund can provide an alternative to the onerous terms and conditions that are generally available to such entrepreneurs.

In order to augment the amount of capital raised from spectrum auctions, all large competitors in markets where there is a dearth of small, minority, and female entrepreneurs should contribute to the capital pool operated by the Fund. A mechanism similar to the universal service fund should be created to assess and collect contributions that are proportionate to a dominant competitor's size and market presence.

Precedence for such a mechanism can be found in the Tennessee state code that requires all telecommunications competitors to contribute to a small and minority telecommunication business assistance program that will use the money to provide loan guarantees, technical assistance, consulting and educational services. The Tennessee program will collect 10 million dollars over a 5 year period. If such a program were established at the national level, it would presumably collect funds from all interstate competitors and substantially augment the amount of funds under the supervision of the Telecommunication Development Fund.

Conclusion

Thank you for the opportunity to participate in this forum of Market Entry Barriers and I will be glad to elaborate further on ideas that I have presented during the question and answer period.